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4 VICKI ELLSWORTH, et al.,
5 Plaintiffs,
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7 v.
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9 MEDIACOM COMPANY, et al.,
10 Defendants.

11 Case No. 15-cv-05628-JST

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28 **ORDER REGARDING REFERRAL
NOTICE OF PLAINTIFFS' IN FORMA
PAUPERIS STATUS**

The Ninth Circuit has made a referral to this Court, asking it to determine whether in forma pauperis (“IFP”) status should continue on the appeal taken by Plaintiffs-Appellants Vicki Ellsworth and James La Vell Harris or whether the appeal is frivolous or taken in bad faith. See ECF No. 13 (notice of referral).

A litigant who was previously permitted to proceed IFP may maintain such status on appeal unless the district court certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed IFP. Fed. R. App. P. 24(a)(3)(A). Similarly, 28 U.S.C. § 1915(a)(3) provides that “[a]n appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith.” “For purposes of section 1915, an appeal is frivolous if it lacks any arguable basis in law or fact.” Ortega v. Barbasa, No. 13-17074, 2014 WL 460019, at *3 (N.D. Cal. Feb. 3, 2014).

The Court concluded in its December 18, 2015 Order that Plaintiffs’ claims were barred by res judicata and dismissed the action with prejudice. See ECF No. 10. The Court finds the appeal frivolous and certifies it as such to the Ninth Circuit.

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The Clerk of the Court shall forthwith notify Plaintiffs and the Ninth Circuit of this order.

See Fed. R. App. P. 24(a)(4).

IT IS SO ORDERED.

Dated: March 7, 2016


JON S. TIGAY
United States District Judge

United States District Court
Northern District of California